

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
GTE Telephone Operating Companies)	CC Docket No. 98-79
GTOC Tariff FCC No. 1)	
GTOC Transmittal No. 1148)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS OF ACI CORP. ON
PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION**

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COMMENTS OF ACI CORP. ON PETITIONS FOR RECONSIDERATION
AND/OR CLARIFICATION

ACI Corp. ("ACI"), by its attorneys and pursuant to section 1.4(b)(1) of the Commission's Rules, 47 C.F.R. § 1.4(b)(1), hereby submits these comments in response to the petitions for reconsideration and/or clarification filed by MCI WorldCom, Inc. ("MCI WorldCom") and the National Association of Regulatory Utility Commissioners ("NARUC") in the above-docketed proceeding.¹

ACI supports the Commission's conclusion that digital subscriber line ("DSL") service is a special access service falling within the FCC's exclusive interstate jurisdiction² but agrees with petitioners that the *GTE DSL Order* employs a potentially confusing rationale that merits clarification. While reaffirming that DSL is jurisdictionally interstate, the Commission should clarify that DSL service does not include Internet access services but is itself only the telecommunications transport medium. This clarification will maintain the important distinction between DSL technology and the services that are provided via DSL in order to ensure that the

¹ MCI WorldCom, Inc. Petition for Reconsideration (filed Nov. 30, 1998); Request for Clarification and/or Reconsideration of the National Association of Regulatory Utility Commissioners (filed Nov. 30, 1998).

² *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, Memorandum Opinion and Order ¶ 1, CC Docket No. 98-79 (Oct. 30, 1998) ("*GTE DSL Order*").

fundamental Computer II basic/enhanced (telecommunications/information services) distinction remains intact.

INTRODUCTION

GTE filed an amendment to its interstate tariff on May 15, 1998 to include DSL services for transmission of broadband high-speed data services. (The GTE amendments do not include Internet access services or any information services). Several parties filed petitions requesting that the FCC reject, or in the alternative suspend and investigate, GTE's proposed tariff on various grounds. The Commission suspended the tariff and commenced an investigation, soliciting comment on two issues: (1) whether GTE's DSL tariff was properly within the FCC's interstate jurisdiction; and (2) whether the FCC should defer its ratemaking authority to review GTE's tariff to the states in order best to ensure that GTE does not engage in unlawful pricing activity, namely, price squeezes.³

On October 30, 1998, the *GTE DSL Order* concluded that GTE's DSL service was an interstate special access service that is properly within the Commission's interstate jurisdiction.⁴ The Commission declined to defer its ratemaking authority to the states on grounds that it has both the authority and the expertise to review GTE's tariff to prevent unlawful pricing activity. MCI WorldCom and NARUC have filed petitions for reconsideration and/or clarification regarding, *inter alia*, the Commission's analysis on the jurisdictional issue.

³ *GTE Telephone Operating Companies GTOC Tariff FCC No. 1 GTOC Transmittal No. 1148*, Order Suspending Tariff and Designating Issues for Investigation, CC Docket 98-79, at 3 (rel. Aug. 20, 1998).

⁴ *GTE DSL Order* ¶ 1.

DISCUSSION

The FCC is correct that DSL is a form of special access service, which has long been under interstate jurisdiction. As ACI explained in its comments,⁵ DSL service provides direct connectivity to an Internet Service Provider (“ISP”) through a dedicated line connecting an end user to the ISP’s point of presence (“POP”). This service is thus the modern incarnation of special access services that provide telephony customers with a direct “pipe” from their premises to a long distance carrier’s POP.

The *GTE DSL Order* also includes superfluous, confusing discussion of an alternative theory of interstate jurisdiction. In addition to its special access analysis, the Commission separately reasoned that DSL provides service from the end user’s premises to any “distant Internet website accessed by the end user.”⁶ This incorrect conclusion, applying the FCC’s traditional “end-to-end” jurisdictional analysis, may lead to later confusion about the nature of DSL services and undermine the *Computer II* model codified in the Telecommunications Act of 1996.⁷ Indeed, due to the unique nature of advanced services, the Commission’s traditional end-to-end analytic construct may be inapplicable, because the “end points” of communication become virtually irrelevant in the “connectionless” medium of today’s packet-switched based Internet technology.

In determining the boundaries of DSL jurisdiction, the Commission should therefore separate DSL technology from the nature of the services it will carry.⁸ DSL technology provides a non-switched, dedicated line from an end user’s premises to the POP of an ISP or data provider. This technology has the capability to transmit Internet, voice, and data traffic along a

⁵ ACI/FirstWorld Comments at 4-10.

⁶ *GTE DSL Order* ¶ 19.

⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁸ See ACI/FirstWorld Comments at 5.

single broadband, dedicated conduit. While GTE itself provides only the dedicated conduit, the “totality of the communication” analysis employed in the *GTE DSL Order* suggests that GTE’s DSL service is thus interstate simply because it transmits interstate Internet traffic. This analysis incorrectly ascribes to GTE the qualities of an ISP which, under the *Computer II* and 1996 Act paradigms, is an information service provider.⁹

The FCC’s end-to-end jurisdictional analysis in this matter is, as MCI WorldCom has correctly explained,¹⁰ at odds with its well-established regulatory dichotomy between “telecommunications” and “information services.” Telecommunications provide a “pure transmission capacity”¹¹ that carries “information of the user’s choosing, without change in the form or content of the information as send and received.”¹² Information services offer “a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”¹³ The Commission has held that ISPs are information services¹⁴ and has applied this rule to avoid a slippery slope of Title II obligations for ISPs. If the basic/enhanced dichotomy were breached, “it would be difficult to devise a sustainable rationale under which all, or essentially all, information services did not fall into the telecommunications service category.”¹⁵ Yet by applying the traditional “end-to-end” construct in this case, the Commission has reached a similarly absurd result: that a

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 98-67, Report to Congress ¶ 66 (Apr. 10, 1998) (“*Stevens Report*”).

¹⁰ “Because it treats the ISP as if it is a provider of telecommunications, the Commission’s jurisdictional analysis is completely inconsistent with the statutory definitions of ‘information service’ and ‘telecommunications,’ as the Commission has interpreted those terms in the Universal Service Report to Congress and in orders adopted since the passage of the 1996 Act.” MCI WorldCom Petition at 3.

¹¹ *Stevens Report* ¶ 55.

¹² 47 U.S.C. § 153(43).

¹³ *Id.* § 153(20).

¹⁴ *Stevens Report* ¶ 68.

¹⁵ *Id.* ¶ 57.

telecommunications provider such as GTE becomes an information services provider when its customers use a telecommunications service to reach the Internet.

Nothing in the tariff or Internet policy supports this result. GTE's own service description states that it "does not undertake to originate data, but offers the use of its service components, where available, to customers for the purpose of transporting customer-originated data."¹⁶ Instead, GTE's "service will be most commonly used by Internet Service Providers (ISPs), as part of their end-to-end Internet service."¹⁷

Thus, the *GTE DSL Order* has blurred the distinction between telecommunications and information services in the context of DSL by aggregating both the telecommunications transport offered by GTE and the separate Internet access services offered by its ISP customers. As NARUC points out in its petition, the FCC's rationale "suggests treatment of enhanced service providers as common carriers"¹⁸ which is patently inconsistent with the FCC's continued forbearance from regulating enhanced and information service providers.¹⁹ The converse is also true: the Commission's rationale suggests the treatment of common carriers as enhanced service providers, which of course would obviate the need for GTE to tariff DSL in the first instance.²⁰

In sum, the Commission should clarify the *GTE DSL Order* to hold that DSL technology

¹⁶ GTE Tariff FCC No. 1, Section 18.7(b).

¹⁷ *Id.*

¹⁸ NARUC Petition at 8.

¹⁹ "We find generally, however, that Congress intended to maintain a regime in which information service providers are not subject to regulation as common carriers merely because they provide their service 'via telecommunications.'" *Stevens Report* ¶ 13 (citation omitted). *See also Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, Order, 77 FCC 2d 389, 434 (1980).


²⁰ Further, "the 'end-to-end' analysis proves too much, because it would result in the reclassification, and preemption of state jurisdiction, of many intrastate facilities and services that have always been subject to state tariffing and regulation under the Act." For instance, in the case of private line service between San Francisco and Los Angeles, traditionally classified as intrastate and subject to state jurisdiction, if an interexchange resale carrier were to purchase such a line, the "end-to-end" analysis of the Commission would compel the conclusion that this intrastate facility is transformed into an interstate facility simply because it is used by the reseller for interexchange service offerings. Letter from Glenn Manishin, Counsel for ACI Corp., to Magalie Roman Salas, FCC, at 3 (filed Oct. 29, 1998).

falls within its interstate jurisdiction solely by virtue of its function as a mixed traffic special access technology. The superfluous analysis under the traditional "end-to-end" model is an unwieldy construct that can easily lead to further confusion and untoward policy results.

CONCLUSION

For these reasons, the Commission should grant the petitions of MCI WorldCom and NARUC and clarify its analysis in the *GTE DSL Order* to hold that GTE's DSL service is an interstate solely as a mixed-use special access service.

Respectfully submitted,

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